IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVI APPELLATE SIDE JURISDICTION

WRIT PETITION NO 6748 OF 2005

Rajkumar K Patil ....Petitioner

vs

Prakash S Kadam and ors.. ..Respondents

Mr. G.S.Godbole for petitioner

Mr Rahul S Kate for respondent no.l

Mr. Palekar AGP for State

CORAM: S.U.KAMDAR J.

Dated 5.l2.2005

P.C:

l. By the present petition the petitioner is challenging the order dated 2l.9.2005 by which the petitioner has been disqualified from being the Sarpanch of the Grampanchayat under section l4(g) of the Bombay Village Panchayat Act l958. The allegation against the petitioner is that though the contract was given during the period 200l, in respect of the said contract on 7.4.2003 the petitioner accepted the cheque duly signed by the Gramsevak in his own individual name. He got the said cheque encashed and thereafter disbursed the amount. The petitioner as Sarpanch could not have accepted the said cheque in his name and got the same encashed. The cheque which was to be issued

to the contractor and should have been issued in the name of the contractor. In view of the aforesaid the learned Dy Commissioner Pune Division Pune has come to the conclusion that the case is made out under the provisions of section l4(g) of the said Act. The said section inter alia provides that if any person as a member of the Panchayat who take the benefit directly or indirectly, by himself or his partner, any share or interest in any work done by order of the panchayat, or in any contract with, by or on behalf of, or employment with or under, the panchayat then he is liable to be disqualified. The petitioner being the sarpanch has accepted the cheque in his name from the grampanchayat, encashed it and thereafter disbursed the money to the contractor, obviously indicates that he has taken share or interest in the work carried out for the panchayat and therefore he is rightly disqualified under section l4(l)(g) of the Bombay Village Panchayats Act, l958. However, the learned counsel for the petitioner has not disputed the fact that the petitioner has accepted the cheque in his personal capacity. He took the said cheque and encashed the same and thereafter disbursed the same to the contractor. He has however, contended that in the aforesdaid facts no case for disqualification is made out under section

l4(g) of the Bombay Village Panchayats Act l958. The learned counsel has in support of his above contention relied upon the judgment of the Apex Court in the case of Gulam Yasin Khan vs Sahebrao Yeshwantrao Walaskar and anr, reported in AIR l966 SC l339 and he has particularly relied upon para 8 of the said judgment . It has been contended by the learned counsel by relying on the said para that even if the cheque is issued in his personal name and he has encashed same still he would not fall under section l4(g) of the said Act because the contract was already completed prior to his election as Sarpanch and, therefore, he has not derived any interest directly or indirectly in the said contract. However, perusal of the said para 8 of the said judgment does not carve out any such proposition of law. On the contrary it holds that the provision of disqualification which is introduced for purity of administration must be liberally construed. Keeping this in mind in my opinion merely because contract is already completed before the petitioner became Sarpanch is not by itself sufficient while admittedly for the said contract cheque for payment was made in the name of Sarpanch personally. Admittedly he encashed the cheque and withdrew the amount in cash and thereafter distributed and paid to the

contractor. The aforesaid facts indicates that the petitioner has taken a share in the contract and therefore indulged in the aforesaid illegal method of payment. In that view of the matter petition is dismissed with no order as to costs.

. The learned counsel for the petitioner applies for continuance of the interim order. Application is rejected. Certified copy is expedited.